

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARL MONTIGUE LEWIS,

Petitioner,

No. CIV S-03-1410 GEB EFB P

vs.

DAVID L. RUNNELS,

Respondent.

ORDER

Petitioner is a state prisoner proceeding through counsel with this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. One of petitioner's claims for relief is that his conviction must be reversed because the prosecutor exercised peremptory challenges to strike two jurors on the basis of race, in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). That claim has been set for evidentiary hearing on February 2, 2009.

On January 14, 2009, petitioner filed a motion for discovery, in which he requests that respondent produce: (1) completed juror questionnaires for prospective jurors on petitioner's jury panel who were not seated for trial, and (2) all personal notes written by the prosecutor regarding jury selection and individual jurors, including notes relating to juror questionnaires and "questions asked of, and answers given by prospective jurors during voir dire." Points and Authorities in Support of Motion for Discovery, at 3. In response to petitioner's motion for

1 discovery, respondent's counsel informs the court that the prosecutor has searched the relevant
2 files and has determined that no such documents exist. Response to Motion for Discovery, at 2.
3 Respondent states that "there is simply nothing to discover." *Id.*

4 Good cause appearing, it is hereby ORDERED that, within seven days from the date of
5 this order, respondent shall file a certification to that effect.¹ The certification shall be signed
6 under penalty of perjury.

7 DATED: January 22, 2009.

8 
9 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

25 ¹ The certification should include the signature of the individual who performed the search
26 for the documents and affirm that he/she has conducted a thorough search of all relevant records and
has determined that the materials requested by petitioner in his motion for discovery do not exist.